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10                   UNITED STATES DISTRICT COURT  
11                   WESTERN DISTRICT OF WASHINGTON  
12                   AT TACOMA

13 CHARLES L. THOMAS,

14                   Plaintiffs,

15                   v.

16 JEFFRY HOOD, et al.,

17                   Defendants.

Case No. 3:10-cv-05369-RJB-JRC

ORDER ADOPTING REPORT AND  
RECOMMENDATION

18         This matter comes before the Court on the Report and Recommendation of Magistrate  
19         Judge J. Richard Creatura. Dkt. 13. No objections to the Report and Recommendation have  
20         been filed.

21         On May 18, 2010, Plaintiff Charles L. Thomas filed a civil rights complaint under 42  
22 U.S.C. § 1983. Dkt. 5. Plaintiff named as Defendants Recreation Athletic Specialist 3 (RS3)  
23 Jeffrey Hood and the Washington State Department of Corrections. *Id.*

24         Plaintiff alleges that Defendant Hood “mistreated [Mr. Thomas] by abusing his authority  
25 and showing favoritism of the Caucasian race.” Dkt. 5, at 3. In support of his claim, Mr.

1 Thomas attaches several Department of Corrections grievance forms that allege (1) Defendant  
2 Hood denied Mr. Thomas the use of a music recording machine and (2) Defendant Hood had a  
3 "nasty attitude" towards Mr. Thomas and refused to speak with him. Dkt. 5, at 4-7.

4 On August 19, 2010, Defendants filed a motion to dismiss pursuant to Fed.R.Civ.P.  
5 12(b)(6) and to stay discovery. Dkt. 12. Defendants argue that dismissal is appropriate under  
6 Rule 12(b)(6) because (1) claims against the State and Defendant Hood in his official capacity  
7 are barred by the Eleventh Amendment, (2) Mr. Thomas failed to exhaust all of his available  
8 administrative remedies, (3) Mr. Thomas fails to state a claim on which relief can be granted,  
9 and (4) Defendant Hood is entitled to qualified immunity. *Id.* Defendants also argue that a stay  
10 of discovery is appropriate because a dispositive motion is pending. *Id.*

12 On November 4, 2010, Magistrate Judge Creatura issued the Report and  
13 Recommendation presently before the Court. Dkt. 13. Magistrate Judge Creatura recommends  
14 that the claims against the State and Defendant Hood in his official capacity be dismissed  
15 because they are barred by the Eleventh Amendment. *Id.* Magistrate Judge Creatura also  
16 recommends that the motion to dismiss pursuant to (1) a failure to exhaust, (2) a failure to state a  
17 claim, and (3) qualified immunity be denied. *Id.* Magistrate Judge Creatura further recommends  
18 that discovery in this case be strictly limited to Defendant Hood's intent in denying Mr. Thomas  
19 the use of the music recording machine and what the Department of Corrections considered in  
20 the grievance procedure.

22 The Court concurs with the well-reasoned analysis of the Magistrate Judge. While claims  
23 against the State and Defendant Hood in his official capacity are barred by the Eleventh  
24 Amendment, dismissal of the claims against Mr. Hood in his personal capacity is not appropriate  
25 at this early stage of the proceedings. Accordingly, the Court should (1) adopt the Report and  
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1 Recommendation, (2) dismiss with prejudice claims against the Washington Department of  
2 Corrections and Defendant Hood in his official capacity, (3) deny the remainder of Defendants'  
3 motion to dismiss, and (4) strictly limit discovery to whether Mr. Hood had an improper motive  
4 or intent in denying plaintiff the use of the recording machine in recreation and what the  
5 Department of Corrections considered during the grievance procedure.

6 Therefore, the Court does hereby **ORDER** that:

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8 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 13);

9 (2) Claims against the Washington Department of Corrections and Defendant  
10 Hood in his official capacity are **DISMISSED WITH PREJUDICE**. The  
remainder of the motion is **DENIED** consistent with the Report and  
11 Recommendation. Discovery will be strictly limited to whether Mr. Hood had  
12 an improper motive or intent in denying plaintiff the use of the recording  
machines in recreation and what the Department of Corrections considered  
during the grievance procedure.

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14 (3) This case is **RE-REFERRED** to Magistrate Judge Creatura, and;

15 (4) The Clerk is directed to send a copy of this Order to plaintiff and to the Hon.  
16 J. Richard Creatura.

17 DATED this 16th day of December, 2010.

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21 ROBERT J. BRYAN  
United States District Judge